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SUPREME COURT OF THE STATE OF WASHINGTON

No. 29948, En Banc

BOEING AIRCRAFT COMPANY, A CORPORATION,
Respondent,

vs.

RECONSTRUCTION FINANCE CORPORATION, A FEDERAL CORPORATION ORGANIZED UNDER THE LAWS OF THE UNITED STATES,
Defendant,

KING COUNTY, WASHINGTON, A MUNICIPAL CORPORATION, AND CARROLL CARTER, ITS TREASURER,
Appellants.

Filed in Clerk's Office, Supreme Court, State of Washington, Feb. 5, 1947. Benj. T. Hart, Clerk.

STATEMENT AS TO JURISDICTION

Respondent above named, being uncertain as to whether or not the judgment from which an appeal was taken in Case No. 1027 is a final judgment within the meaning of Section 237(a), Judicial Code, as amended by the Act of February 13, 1925, petitioned for an allowance of appeal in this case. Accordingly, if the appeal in Case No. 1027 is dismissed as premature, this appeal should be heard.

In compliance with Rule 12 of the Supreme Court of the United States, the above named respondent herewith submits its separate statement showing the basis of the jurisdiction of the Supreme Court of the United States to entertain an appeal in this case:

(a) The statutory jurisdiction of the Supreme Court of the United States to review by direct appeal the judgment complained of is conferred by Section 237(a), or Section 237(b) if the proper mode of review is by petition for certiorari, Judicial Code, as amended by the Act of February 13, 1925.

(b) **State Statute Involved**

The statute of the state of Washington which was held to confer the power to levy the taxes herein challenged, but which respondent contends is repugnant to the laws of the United States is Chapter 142, p. 401, Laws of Washington 1944-1945 (Rem. Supp. 1945, 11150-1) providing as follows:

> "Notwithstanding anything to the contrary in the laws of the State of Washington, expressed or implied, the United States and its agencies and instrumentalities and their property are hereby declared to be taxable, and shall be taxed under the existing laws of this state or any such laws hereafter enacted, whenever and in such manner as such taxation may be authorized or permitted under the laws of the United States."

(c) The date of the judgment entered by the Supreme Court of Washington is August 12, 1946. A petition for rehearing was filed on September 10, 1946, (R. —) and was denied on September 26, 1946, (R. —).

Petitioner deeming the judgment entered by the trial court on December 20, 1946, as not conforming to the mandate of the Supreme Court of the State of Washington in that the judgment provided:

> "It is further hereby declared and decreed that plaintiff is obligated to pay said real property taxes

> for the years 1944 and 1945 under its lease agreement with the defendant Reconstruction Finance Corporation."

filed in the Supreme Court of the State of Washington on December 23, 1946, an application for the recall of the remittitur and the correction of the judgment. This application was denied January 17, 1947. The petition for appeal was filed in the Supreme Court of the State of Washington on February 5, 1947.

Laws of the United States Involved

The laws of the United States involved are:

(1) Enabling Act, Article 4, 12 Stat. 239, by which the state of Washington was admitted to the Union and which provides, in part, as follows:

> "And said conventions shall provide, by ordinances irrevocable without the consent of the United States, and the people of said states: . . .
>
> "Second. That the people inhabiting said proposed states do agree and declare . . . that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States, or reserved for its use. . . ."

(2) 15 U. S. C. 610, which provides, in part, as follows:

> "The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

Nature of the Case

On or about the 4th day of August, 1941, petitioner entered into an agreement of lease with Reconstruction Finance Corporation and amendatory agreements of lease on or about January 4, 1943 and March 22, 1944. Pursuant to the original agreement of lease, petitioner proposed to acquire, in the name of Reconstruction Finance Corporation, a site near Renton, Washington, suitable for the construction of an aircraft manufacturing plant. In performance of this agreement petitioner did acquire the site in the name of the Reconstruction Finance Corporation, and upon each acquisition petitioner immediately obtained a leasehold interest therein and improvements were thereafter made and were devoted exclusively to the manufacture of military aircraft and parts.

Petitioner, in the agreement of lease, agreed to pay "* * * all taxes, assessments and similar charges * * * which at any time during the term of this lease or any extension thereof may be lawfully taxed, assessed or imposed upon Defense Corporation or lessee with respect to or upon the site, buildings or machinery or any part thereof." The officials for King County assessed and levied taxes upon all of said property for the years 1943 and 1944. The taxes thus assessed during the year 1943 if valid were payable on and after February 15, 1944, and the taxes thus assessed during the year 1944 were payable on and after February 15, 1945. Petitioner Boeing Aircraft Company refused to pay said taxes as not being lawfully assessed or imposed upon the property in question. Reconstruction Finance Corporation at all times demanded that petitioner pay such taxes. On June 1, 1945, petitioner commenced an action in the Superior Court for the State of Washington, County of King, for a declaration as to its obligation to pay said taxes

under its lease agreement with Reconstruction Finance Corporation and a declaration as to the lawfulness of the real property taxes assessed against the real property of Reconstruction Finance Corporation. The Superior Court entered its judgment February 15, 1946, declaring that the taxes levied in the years 1943 and 1944, and payable in 1944 and 1945, respectively, were illegal and void, and the petitioner was not obligated to pay said taxes under its lease agreement with the Reconstruction Finance Corporation. King County, Washington, and Carroll Carter, its Treasurer, appealed to the Supreme Court of the State of Washington, and such Court, on August 12, 1946, entered judgment reversing the judgment of the Superior Court. A copy of the opinion of the Supreme Court of Washington is appended hereto.*

The Federal Question and the Ruling Thereon

1. Petitioner, in its complaint for declaratory judgment, challenged the 1944 and 1945 taxes upon the grounds "that the hereinabove described and improved real property being property belonging exclusively to the United States of America is wholly exempt from taxation by reason of the Enabling Act, Section 4, Second, the constitution of the State of Washington, as amended by the Fourteenth Amendment and Remington's Revised Statutes, Section 11111;" (R. —).

The trial court entered its Conclusions of Law holding:

> "Title to the real property and improvements upon which taxes were assessed was vested in the United States of America prior to and at all times since the levy of taxes in October 1943 and therefore by reason of Article 4, Second, of the Enabling Act and Article

* (Clerk's Note. The opinion is printed as an appendix to the Jurisdictional Statement in No. 1027 and is not reprinted here.)

> XXVI of and Amendment 14 to the Constitution of the State of Washington and Rem. Rev. Stat. 11111 providing that real property belonging to the United States shall be exempt from taxation, the real property taxes herein challenged for the years 1944 and 1945 are illegal and void."

Upon appeal from the decision of the Superior Court to the Supreme Court of Washington, both appellants and respondent in that appeal in their briefs argued the effect of the Enabling Act. The Supreme Court of Washington in this case noted:

> "In addition to the above statute, we must, in arriving at a decision in this case, examine the enabling act, and the constitutional and statutory provisions of this state. Our enabling act, Art. 4, provides in part as follows: * * *" (R. —)

The Supreme Court of Washington, recognizing that consideration must be given to the provisions of the Enabling Act further acknowledged:

> "However, after the state had accepted the terms of the enabling act by framing and passing a constitution, and Congress had approved the constitution, and the president of the United States had issued a proclamation to that effect, each government was bound by the provisions of that enabling act." (R. —.)

The Supreme Court of Washington also noted:

> "It is an inescapable conclusion that the framers of the constitution and the Congress of the United States intended that any agreement allowing Federal property to be taxed, would be arrived at by the passage of laws by the Congress of the United States and the legislature of the State of Washington." (R. —.)

The meaning of the Enabling Act presents a purely Federal question to decide what Congress intended in requiring

the "consent of the people of said states" to revocation of the ordinances provided in Article 4. Petitioner contended that the necessary consent of the people could only be given by an amendment to the state constitution.

2. Retrospective application was given by the Supreme Court of the State of Washington to Chapter 142, Laws of 1945, State of Washington, in its opinion, as supplying the necessary state consent to the imposition of the challenged taxes. This retrospective application was suitably challenged at the earliest opportunity by respondent's petition for rehearing, (R. —). Retrospective application constitutes an impairment of respondent's contract with Reconstruction Finance Corporation in violation of Article 1, Section 10, of the United States Constitution.

3. The lease agreements between respondent and Reconstruction Finance Corporation were attached as exhibits to and incorporated by reference into the complaint for declaratory judgment. The lessee agreed to pay "all lawful taxes" which might be imposed upon the leased property. This being a contract to which the United States is a party, its meaning and effect is a matter of Federal law to be finally declared by the United States Supreme Court.

Cases Believed to Sustain Jurisdiction

The following decisions of the Supreme Court of the United States are believed to sustain its jurisdiction to entertain this appeal:

S. R. A. v. *Minnesota*, 326 U. S. 703, 90 L. Ed. 663, involved the right of the state of Minnesota to tax real property being purchased under a real estate contract from the United States. In this case the Court said:

> "The supremacy of the Federal government in our Union forbids the acknowledgment of the power of any

> state to tax property of the United States against its will. * * * This postulate, as a matter of federal law, forces final decision of the validity of claimed exemptions under this immunity upon this Court."

In the same opinion, and as further reason for sustaining the jurisdiction in this appeal, the court said:

> "In determining the meaning and effect of contracts to which the United States is a party, the governing rules of law must be finally declared by this Court. *United States v. Allegheny, supra.*"

In the present case petitioner, by its lease agreement, undertook to pay all "taxes which might be lawfully levied or assessed" upon the leased property. This presents for decision a question of whether petitioner as lessee is obligated to pay taxes invalid under the laws of the United States. *United States* v. *Allegheny County*, 322 U. S. 174, 88 L. Ed. 1209.

That the provisions of the Enabling Act under which the State of Washington was admitted to the Union are presently binding upon the State of Washington appears from the case of *Case* v. *Bowles*, 326 U. S. 706, 90 L. Ed. 398.

> "The constitutional provision against impairing contract obligations is a limitation upon the taxing power, as well as upon all legislation whatever form it may assume." *Murray v. Charleston*, 96 U. S. 432, (6 Otto 432), 24 L. Ed. 760.

In the instant case the State court has interpreted a state law as operating retrospectively which petitioner contends is contrary to Article 1, Section 10, of the United States Constitution.

Congress did not intend to make its consent to state taxation of real property owned by Reconstruction Finance Corporation self-executing but rather, in the words of this court

in the case of *Reconstruction Finance Corporation* v. *Beaver County*, — U. S. —, 90 L. Ed. Adv. Op. 919:

> ". . . indicated an intent to integrate Congressional permission to tax with established local tax assessment and collection machinery."

The Supreme Court of Washington by its ruling holds this consent to be self-executory.

The Questions Are Substantial

The federal questions decided by the Supreme Court of the State of Washington in this case are substantial and important. This Court can take notice of the vast investments in real property owned by Reconstruction Finance Corporation and other comparable federal instrumentalities within the State of Washington, not only in the aircraft industry but light metals, pulp by-products, shipyards, lumber and other industries. Final disposition of these questions will determine tax liability with respect to these vast investments.

The enabling Act involved in this action also governs the states of Montana, North Dakota and South Dakota.

This Court entertained the appeal involving similar considerations as presenting a substantial question in the case of *Reconstruction Finance Corporation* v. *Beaver County*, — U. S. —, 90 L. Ed. Adv. Op. 919.

BOEING AIRCRAFT COMPANY,
By JAMES E. PRINCE,
WENDELL W. BLACK.

Of Counsel,
J. PAUL COIE.